UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONDRELL HIBBLER,

Plaintiff, Case No. 05-C-477

v.

MARIE KING, LINDA FAIT,
HICKS and JAMES NAUTT,

Defendants.

OPINION AND ORDER

The Plaintiff, Dondrell Hibbler, is a prisoner in state custody. The Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Under the Prison Litigation Reform Act (PLRA) enacted April 26, 1996, the Plaintiff is required to pay the statutory filing fee of $250.00. See 28 U.S.C. § 1915(b)(1).

The PLRA, which amended the in forma pauperis statute, requires the court to assess an initial filing fee of twenty percent of the average monthly deposits to the Plaintiff's account or average monthly balance in the Plaintiff's prison account for the six-month period immediately preceding the filing of the Complaint, whichever is greater.

After the initial fee is paid, the Plaintiff must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(1). The agency which has custody of the Plaintiff will collect the

money and send payments to the court. No payment is required in months when the Plaintiff's preceding month's income is $10.00 or less.

The Plaintiff filed a certified copy of his prisoner trust account statement for the six-month period immediately preceding the filing of the complaint as required under 28 U.S.C. § 1915(a)(2). This account statement shows the activity in the Plaintiff's prison account for the past six months.

A review of this information reveals that, for the six-month period immediately preceding the filing of the instant complaint, the average monthly deposit to the Plaintiff's prison account was $20.52 and the average monthly balance to the account was $27.69. Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1)(B), the Plaintiff is required to pay an initial partial filing fee of $5.54. The Plaintiff shall pay the initial partial filing fee of $5.54 to the Clerk of this court within 21 days of the date of this order. Failure to pay the initial filing fee within the time specified will result in dismissal of this matter with prejudice pursuant to Local Rule 41.3 (E.D. Wis.) and Fed. R. Civ. P. 41(b).

The PLRA also provides that, if a prisoner files more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other action in forma pauperis unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that his action is later dismissed for any of the above reasons, it will have an impact on the prisoner's ability to bring other actions in forma pauperis. Accordingly, the Plaintiff will be afforded an opportunity to dismiss this action voluntarily to avoid incurring a "strike" under section1915(g).

Notice to Plaintiff: If you do not wish to pay the filing fee as set forth in this order or do not wish to proceed with this action to avoid incurring a "strike" under § 1915(g), you must notify the court by writing a letter to the clerk within 21 days of the date of this order, stating that you do not wish to prosecute this civil action. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under § 1915(g).

NOW, THEREFORE, IT IS HEREBY ORDERED that within 21 days of the date of this order, the Plaintiff shall forward to the clerk of this court the sum of $5.54 as an initial partial filing fee in this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed in forma pauperis. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet this standard, the action will be dismissed.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 3rd day of May, 2005.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge